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Elizabeth Miller
Elizabeth Miller

July 27, 2001
Date

ATTY DOCKET No. 10990616-1

#5
Plunkett
8/17/01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Schantz et al.

Group Art Unit: 1631

Serial No.: 09/558,532

Examiner: Ardin H. Marschel

Filed: April 26, 2000

Title: ARRAY FABRICATION WITH DROP DETECTION

TECH CENTER 1600/2900

AUG 03 2001

RECEIVED

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In response to the species Restriction Requirement mailed 06/27/01,
Applicants elect with traverse "Specie B" claims 1-44 (as identified by the Examiner).
With regard to the drawing objections, new drawings are being mailed on the same
date as this response.

Applicants remind the Examiner that in making the restriction requirement
between the identified species the Examiner, at least implicitly, is acknowledging that
each identified species is patentable over the other. This is so since for any restriction
MPEP 802.01 requires that each of the subjects of the restriction must be
"PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may
each be unpatentable because of the prior art)".

Applicants respectfully traverse the Examiner's requirement. The Examiner's
restriction is based on an argument that "the species are distinct in that droplet
detection via simple sensing may be the qualitative detection of the presence or
absence of a dispensed droplet whereas error detection is generally quantitative in
some way in order to permit correction via adjustment and thus requiring a different
search...". In fact though, the argued distinction of error detection being quantitative

is incorrect for a number of reasons. First, logically the presence of absence of a thing (a drop) may be regarded as quantitative (i.e. this is equivalent to “one drop delivered” or “zero drop delivered”). Second, this is consistent with the specification which makes it clear that an “error” can be the presence or absence of a drop. For example, on page 6, lines 28-30:

“An example of compensating for the error during dispensing of other droplets includes, when the dispensing unit has multiple dispensers and an error in the presence, size or position of droplets...” (emphasis added)

Third, Merriam-Webster’s OnLine Collegiate Dictionary (<http://www.m-w.com/home.htm>) as of 07/26/01 defines “error” as follows:

1 a : an act or condition of ignorant or imprudent deviation from a code of behavior **b** : an act involving an unintentional deviation from truth or accuracy **c** : an act that through ignorance, deficiency, or accident departs from or fails to achieve what should be done: as (1) : a defensive misplay other than a wild pitch or passed ball made by a baseball player when normal play would have resulted in an out or prevented an advance by a base runner (2) : the failure of a player (as in tennis) to make a successful return of a ball during play **d** : a mistake in the proceedings of a court of record in matters of law or of fact

2 a : the quality or state of erring **b** *Christian Science* : illusion about the nature of reality that is the cause of human suffering : the contradiction of truth **c** : an instance of false belief

3 : something produced by mistake; *especially* : a postage stamp exhibiting a consistent flaw (as a wrong color) in its manufacture

4 a : the difference between an observed or calculated value and a true value; *specifically* : variation in measurements, calculations, or observations of a quantity due to mistakes or to uncontrollable factors **b** : the amount of deviation from a standard or specification

5 : a deficiency or imperfection in structure or function <an *error* of metabolism>

Only definition 4 requires an “amount”, the broader definitions (basically relating to “deviation”) do not connote any quantitative value (consistent with use in the present specification).

Given that "error" is not limited to generally quantitative in some way as the Examiner alleges (and in fact includes "qualitative", consistent with the use in the present specification), it is submitted that the distinction drawn by the Examiner is incorrect, and that the restriction requirement should therefore be withdrawn.

In addition, as the Examiner is aware, to justify any restriction requirement he must show an undue search burden. Even if, as the Examiner alleged, "error" is generally quantitative, any art from a search of subject matter of drop dispensing detection with error detection is likely to be pertinent to the concept of drop dispensing detection without error detection. Thus, the Examiner should necessarily search drop dispensing art with error detection in relation to both "Specie A" and "Specie B" claims. For this additional reason, it is submitted that the restriction requirement should be withdrawn.

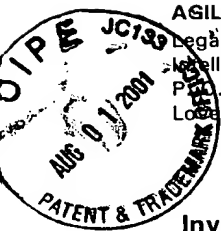
If the Examiner is of the view that there are any outstanding matters that might be resolved by means of a telephone conference, he is invited to call Gordon Stewart at (650)485-2386.

Respectfully submitted,



Gordon Stewart
Attorney for Applicants
Reg. No. 30,528

July 27, 2001
Agilent Technologies, Inc.
Legal Department, DL429
IP Administration
P.O. Box 7599
Loveland, CO 80537-0599



AGILENT TECHNOLOGIES, INC.

Legal Department, DL429

Intellectual Property Administration

P.O. Box 7599

Longland, Colorado 80537-0599

PATENT APPLICATION

ATTORNEY DOCKET NO. 10990616-1

1631

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

H S

Inventor(s): Christopher A. Schantz et a.

Serial No.: 09/558,532

Examiner: Ardin Marschel

Filing Date: April 26, 2000

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TECH CENTER 1600/2900

COMMISSIONER FOR PATENTS

Washington, D.C. 20231

TRANSMITTAL LETTER FOR RESPONSE/AMENDMENT

Sir:

Transmitted herewith is/are the following in the above-identified application:

- () Response/Amendment () Petition to extend time to respond
() New fee as calculated below () Supplemental Declaration
() No additional fee (Address envelope to "Box Non-Fee Amendments")
(X) Other: Response to Restriction Requirement (fee \$)

CLAIMS AS AMENDED BY OTHER THAN A SMALL ENTITY						
(1) FOR	(2) CLAIMS REMAINING AFTER AMENDMENT	(3) NUMBER EXTRA	(4) HIGHEST NUMBER PREVIOUSLY PAID FOR	(5) PRESENT EXTRA	(6) RATE	(7) ADDITIONAL FEES
TOTAL CLAIMS		MINUS		= 0	X \$18	\$ 0
INDEP. CLAIMS		MINUS		= 0	X \$80	\$ 0
[] FIRST PRESENTATION OF A MULTIPLE DEPENDENT CLAIM					+ \$270	\$ 0
EXTENSION FEE	1ST MONTH \$110.00	2ND MONTH \$390.00	3RD MONTH \$890.00	4TH MONTH \$1390.00		\$ 0
OTHER FEES						\$
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT						\$ 0

Charge \$ 0 to Deposit Account 50-1078. At any time during the pendency of this application, please charge any fees required or credit any overpayment to Deposit Account 50-1078 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 50-1078 under 37 CFR 1.16, 1.17, 1.19, 1.20 and 1.21. A duplicate copy of this sheet is enclosed.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231.

Date of Deposit: July 27, 2001

Typed Name: Elizabeth Miller

Signature: Elizabeth Miller

Respectfully submitted,

Christopher A. Schantz et a.

By

Gordon Stewart

Attorney/Agent for Applicant(s)

Reg. No. 30,528

Date: July 27, 2001